

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 178

HOUSE BILL 2016

AN ACT

AMENDING TITLE 13, CHAPTER 38, ARTICLE 22, ARIZONA REVISED STATUTES, BY
ADDING SECTION 13-4085; RELATING TO MATERIAL WITNESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, chapter 38, article 22, Arizona Revised Statutes,
3 is amended by adding section 13-4085, to read:

4 13-4085. Release or detention of material witness: depositions

5 A. IF IT APPEARS FROM AN AFFIDAVIT FILED BY A PARTY THAT THE TESTIMONY
6 OF A PERSON IS MATERIAL IN A CRIMINAL PROCEEDING PURSUANT TO SECTION 13-2319
7 AND IF IT IS SHOWN THAT IT MAY BECOME IMPRACTICABLE TO SECURE THE PRESENCE OF
8 THE PERSON BY SUBPOENA BECAUSE OF THE IMMIGRATION STATUS OF THE PERSON, THE
9 COURT MAY ORDER THE TEMPORARY DETENTION OF THE PERSON AND TREAT THE PERSON
10 ACCORDING TO THE RELEASE PROVISIONS UNDER SECTION 13-3967. A MATERIAL
11 WITNESS MAY NOT BE DETAINED BECAUSE OF THE INABILITY OF THE WITNESS TO COMPLY
12 WITH ANY CONDITION OF RELEASE IF THE TESTIMONY OF THE WITNESS CAN BE SECURED
13 ADEQUATELY BY DEPOSITION AND IF FURTHER DETENTION OF THE WITNESS IS NOT
14 NECESSARY TO PREVENT A FAILURE OF JUSTICE. THE RELEASE OF A MATERIAL WITNESS
15 MAY BE DELAYED FOR A REASONABLE PERIOD OF TIME UNTIL THE DEPOSITION OF THE
16 WITNESS CAN BE TAKEN PURSUANT TO THIS SECTION OR THE ARIZONA RULES OF
17 CRIMINAL PROCEDURE.

18 B. A MATERIAL WITNESS MAY BE DETAINED BY A LAW ENFORCEMENT AGENCY. IF
19 THE MATERIAL WITNESS IS A JUVENILE, THE MATERIAL WITNESS MAY BE DETAINED IN A
20 JUVENILE DETENTION FACILITY OR A JAIL PURSUANT TO SECTION 8-305. A WITNESS
21 SHALL NOT BE DETAINED FOR MORE THAN TWENTY-FOUR HOURS UNLESS AN AFFIDAVIT IS
22 FILED WITH THE COURT PURSUANT TO SUBSECTION A OF THIS SECTION.

23 C. A MATERIAL WITNESS WHO IS BEING DETAINED PURSUANT TO SUBSECTION A
24 OF THIS SECTION MAY BE KEPT IN A PHYSICALLY SEPARATE SECTION OR BE
25 ADMINISTRATIVELY SEGREGATED FROM ANY PERSON WHO IS CHARGED WITH, ADJUDICATED
26 DELINQUENT FOR OR CONVICTED OF A CRIMINAL OFFENSE.

27 D. ON THE MOTION OF ANY PARTY OR A MATERIAL WITNESS WHO HAS BEEN
28 DETAINED PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT MAY ORDER THE
29 EXAMINATION OF THE MATERIAL WITNESS UNLESS THE MATERIAL WITNESS IS THE
30 DEFENDANT OR A PERSON WHO IS EXCLUDED BY RULE 39(B), ARIZONA RULES OF
31 CRIMINAL PROCEDURE, ON ORAL DEPOSITION. THE DEPOSITION SHALL BE NOTICED AND
32 TAKEN PURSUANT TO RULE 15.3, ARIZONA RULES OF CRIMINAL PROCEDURE.

33 E. THE WITNESS MAY BE DETAINED FOR A PERIOD OF UP TO SEVEN DAYS AFTER
34 ENTRY OF THE ORDER, EXCEPT THAT IF AT ANY TIME DURING THE PERIOD OF
35 DETAINMENT IT BECOMES REASONABLY FEASIBLE TO CONDUCT THE EXAMINATION, THE
36 EXAMINATION SHALL BE CONDUCTED IMMEDIATELY AND THE COURT MAY ORDER THE
37 WITNESS TO BE RELEASED IMMEDIATELY AFTER SIGNING THE DEPOSITION UNDER OATH,
38 WAIVING THE SIGNATURE OR OTHERWISE AFFIRMING THE FACTUAL ACCURACY OF THE
39 MATTERS SET FORTH IN THE DEPOSITION.

40 F. A DEPOSITION THAT IS TAKEN PURSUANT TO THIS SECTION MAY BE USED AT
41 TRIAL AND AT ANY PRETRIAL PROCEEDING PURSUANT TO RULE 19.3, ARIZONA RULES OF
42 CRIMINAL PROCEDURE.

~~APPROVED BY THE GOVERNOR MAY 4, 2007.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2007.~~